LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

May 22, 2015

TO: Honorable Dan Patrick, Lieutenant Governor, Senate

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: **SB20** by Nelson (Relating to state agency contracting; authorizing fees; creating an offense.), **As Passed 2nd House**

Estimated Two-year Net Impact to General Revenue Related Funds for SB20, As Passed 2nd House: a negative impact of ($7,348,104) through the biennium ending August 31, 2017.

In addition to cost shown above, there would be an indeterminate fiscal impact for activities related to the vendor performance tracking system. Depending on rules adopted by the Comptroller, the cost related to the vendor performance tracking system may be significant. There would also be an indeterminate fiscal impact for litigation associated with the waivers of sovereign immunity. The costs are likely to be significant but are dependent on the volume of litigation which cannot be determined at this time.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2016	($3,986,381)
2017	($3,361,723)
2018	($2,066,117)
2019	($2,066,117)
2020	($2,066,117)

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from *General Revenue Fund* 1	Change in Number of State Employees from FY 2015
2016	($3,986,381)	21.0
2017	($3,361,723)	21.0
2018	($2,066,117)	21.0
2019	($2,066,117)	21.0
2020	($2,066,117)	21.0

Fiscal Analysis

The bill would amend the Government Code to require the State Auditor's Office to consider auditing contracts entered by the Health and Human Services Commission that exceed $100 million in annual value.

The bill would require the Comptroller of Public Accounts (CPA), in cooperation with the Governor's budget and policy staff, to conduct a study examining the feasibility and practicality of consolidating state purchasing functions and reducing the number of vendors authorized to contract with the state.

The bill would amend the Government Code to require agencies to retain records related to contracts for at least seven years after the expiration of the contract.

The bill would amend the Government Code to specify that purchasing information reported by state agencies in the statewide uniform accounting system should include solicitation and contracting information, as defined by CPA.

The bill would require agencies to submit a certain number of requests for pricing on purchases made through multiple award contract schedules at the Department of Information Resources (DIR) depending on the value of the goods, services, and contracts. Agencies would be prohibited from making purchases for commodities in a single fiscal year in excess of $1 million under a single contract in a multiple award schedule. Agencies would also be required to receive approval for statements of work on DIR information technology commodity contracts worth more than $50,000.

The bill would amend the Government Code to allow CPA to contract with entities that administer cooperative purchasing programs and agreements. The bill would require agencies to comply with certain reporting requirements for each contract with a value exceeding $1 million, and to comply with certain additional requirements for each contract with a value exceeding $5 million. Agencies would be required to develop a risk analysis procedure and identify certain types of contracts for enhanced contract or performance monitoring. The bill would also require agencies, including the Texas Department of Transportation (TxDOT), to post online a list of the contracts the entities have entered along with the statutory authorities and request for proposals associated with the procurements.

The bill would amend the Government Code to require agencies to use the vender performance tracking system to determine whether to award a contract to a vendor reviewed in the system. CPA would be required to develop an evaluation process to rate vendors on an "A" through "F" scale. CPA would be required to establish in rule how these ratings affect a vendor's eligibility for state contracts and the grades on the scale that disqualify a vendor from state contracting. The tracking system would be accessible to the public on CPA's website. The bill would also require agencies to consider prior vendor performance when renewing a contract or considering a rebid for a contract.

Additionally, CPA could bar vendors from participating in state contracts if more than two contracts between the vendor and the state have been terminated by the state within the last three years.

The bill would amend Government Code related to the registration of lobbyists required to file with the Ethics Commission.

The bill would amend the Government Code to add persons with a disability to the definition of an "economically disadvantaged person" for the purpose of identifying a historically underutilized business (HUB). The bill would require the CPA to adopt rules to provide goals for increasing the contract awards for purchases by state agencies to businesses that qualify as HUBs because they are owned or owned, operated, and controlled, as applicable, wholly or partly by one or more persons with a disability.

The bill would amend the Education Code to require the disclosure of research sponsors in certain public communications.

The bill would amend the Civil Practice and Remedies Code to remove the minimum dollar amount for claims of breach of a written contract with state agencies for certain services therefore making the waiver of immunity applicable to all such claims. The bill would also expand the damages available to a claimant under a contract with the state for these services including a claim for increased costs due to state-caused delays, claims for amounts owed for additional work, and recovery of attorney's fees.

The bill would also amend the Government Code to waive sovereign immunity for certain breach of contract claims relating to the transfer of real property to or from the state or a subdivision of the state. Consequential damages, attorney's fees and interest would be recoverable for lawsuits made under this waiver of sovereign immunity.

Methodology

The new debarment and vendor rating requirements will likely lead to significant protests and litigation. The costs associated with these protests and litigation will depend on agency performance evaluations of vendors and the evaluation criteria developed by CPA. Therefore, the potential cost impact of vendor protests and litigation cannot be determined at this time. Given the large number of vendors that hold contracts with the state, the costs could be significant. Likewise, the potential fiscal impacts on state agencies from prohibiting certain vendors from participating in contracts cannot be determined at this time but could be significant, depending on rules adopted by CPA.

This estimate assumes CPA would incur additional administrative costs of $1.3 million in General Revenue to hire 7.0 FTEs in the 2016-17 biennium for legal support for new procurements, ensuring compliance with procurement requirements, and rating vendors in the vendor performance tracking system. Additionally, the CPA would also incur costs of $0.45 million in General Revenue in 2016-17 to contract for assistance to study state procurement.

DIR estimates there would be a cost associated with implementing provisions of the bill including reviewing statements of work for information technology commodity purchases over $50,000. It is anticipated that these cost could be absorbed within existing resources. The agency also anticipates a loss of revenue out of appropriated receipts generated from administrative fees charged to customers of DIR's cooperative contracts program due to the $1 million cap on contracts offered through the program. The agency anticipates that administrative fees would be increased to offset the loss of revenue from purchases through the program. To the extent administrative fees are not increased, there would likely be a reduction in FTEs at DIR.

TxDOT estimates a $2.6 million cost in the 2016-17 biennium to develop a system for identifying and hosting 50,000 contracts on its website annually. This analysis assumes that on-going business costs to maintain this system in fiscal year 2018 and beyond could be absorbed by the agency using existing resources.

The Office of the Attorney General (OAG) estimates a cost to handle a substantial increase in litigation as a result of the new waivers of sovereign immunity. In addition to an estimated 2 FTE's needed to implement the procurement related provisions of the bill, the OAG estimates a workload impact requiring 12 additional legal staff to handle the increase in litigation. The OAG estimates that it would incur a cost of $3.0 million for the 2016-17 biennium.

There would also be an additional indeterminate fiscal impact for litigation associated with the waivers of sovereign immunity. These costs would be incurred for agencies with activities related to the types of contracts where immunity would be waived, including agencies with construction service contracts and real property transfers such as the Texas Facilities Commission and the General Land Office. Based on a sample of state agencies, the costs are likely to be significant. However, the costs are dependent on the volume of litigation and cannot be determined at this time.

In addition to the costs described above, institutions of higher education and state agencies reported some costs associated with implementation of the provisions of the bill, including the verification of contract monitoring information provided by contractors, developing and implementing a risk analysis procedure to identify contracts that require enhanced contract and performance monitoring, and the additional reporting requirements. For purposes of this fiscal note, it assumed that any costs not described above would not be significant and could be absorbed by the institutions and agencies.

Local Government Impact

The bill would amend the Government Code relating to real property contracts entered into by subdivisions of the state. Harris County reported that the bill would significantly impact the way the county and the Metropolitan Transportation Authority of Harris County enter into real estate contracts. There would be a negative fiscal impact to the county resulting from breach of contract lawsuits, attorney's fees, and consequential damages. The Harris County Attorney's Office estimates the bill may increase real estate costs by 10 percent.

Travis County anticipates that the bill would have a significant fiscal impact to the affected department based on potential new liability for attorney's fees, consequential damages, and interest.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 301 Office of the Governor, 302 Office of the Attorney General, 303 Facilities Commission, 304 Comptroller of Public Accounts, 305 General Land Office and Veterans' Land Board, 308 State Auditor's Office, 313 Department of Information Resources, 320 Texas Workforce Commission, 323 Teacher Retirement System, 327 Employees Retirement System, 405 Department of Public Safety, 450 Department of Savings and Mortgage Lending, 454 Department of Insurance, 529 Health and Human Services Commission, 580 Water Development Board, 582 Commission on Environmental Quality, 601 Department of Transportation, 696 Department of Criminal Justice, 701 Central Education Agency, 710 Texas A&M University System Administrative and General Offices, 720

The University of Texas System Administration, 758 Texas State University System, 768 Texas Tech University System Administration, 769 University of North Texas System Administration, 781 Higher Education Coordinating Board, 783 University of Houston System Administration

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